CIVIL WRIT JURISDICTION CASE No.9177 OF 1991

In the matter of an application under Articles 226 and of the 227 of the Constitution of India.

DEVANAND MANDAL, son of Dhodhai Mandal, resident of Village Uphrail, Police Station – Sikti, District - Purnea

---------- Petitioner

Versus

1 .THE STATE OF BIHAR
2. The Collector, Araria
3. The S.D.O. Araria
4. Jai Ballabh Yadav, Labour Inspector, Araria and Inspector Minimum Wages Act, 1948.
5. Kishun Mandal, son of Jabhi Mandal
6. Narayan Mandal,
7. Ganesh Prasad Yadav
8. Suren Mandal
9. Mishri Mandal

All sons of Chintu Mandal

10. Ganesh Mandal, son of Kishori Mandal
11. shri Prasad Mandal, son of Gulab Chand Mandal
12. Kamla Nand Mandal, son of Gulab Chand Mandal

All residents of Village – Aamgachhi, Police Station – Sikti District – Purnea.

---------- Respondents

WEB COPY NOT OFFICIAL

For the petitioner: Mrs. Pallavi Mishra, Mr. Rajendra Kumar Jha and Mrs Tanuja Mishra.

For the respondents No. 5 to 12: Mr. Uday Bhanu Roy.

P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

******

A K Tripathi,J Petitioner is aggrieved by the order dated 31.7.1989 passed by the Sub Divisional Officer, Araria cum designated authority under the Minimum Wages Act, contained in annexure-2, as well as the order dated 30.9.1991 passed by the Collector, Araria in appeal which was dismissed with certain modifications to ananexure-2, as contained in annexure-5. By virtue of these orders petitioner has been directed to

deposit a sum of money which is supposed to be minimum wages payable to private respondents and includes compensation to the tune of ten times.

2. Contention of the learned counsel for the petitioner is that both the impugned orders have been passed not only in breach of statute but also principle of natural justice.

3. The back ground to the present case is that on a kind of agreement entered between the petitioner and private respondents a sum of Rs.1435/- was worked out as payment for digging a pond in the village. After having agreed upon this amount Devanand Mandal at the instigation of some persons filed a false claim that 9 labourers were engaged in digging the pond for 21 days and have not been paid minimum wages. A report thereafter is supposed to have been submitted by the Labour Inspector under section 20(2) of the Minimum Wages Act (hereinafter to be referred to as the Act) certifying the claim of the private respondents. Based on the same the Sub Divisional Officer, Araria passed the impugned order contained in Annexure-2 and liability of Rs.26843.50 was fixed against the petitioner. On an appeal the Collector modified that amount to Rs.14637/- but otherwise dismissed the appeal in so far as other questions raised by the petitioner is concerned. It is in this background that the present writ application has come to be filed.

WEB COPY NOT OFFICIAL

4. Submission of the learned counsel for the petitioner is that the Labour Inspector did not carry out an enquiry as envisaged under section 20 of the Act because at no point of time did he actually

visit the site nor any measurement was carried out of the actual digging work which was done by the private respondents which was required in this case in view of the fact that in terms of the Government Notification, minimum wages have been fixed , based on the measurement of work for digging per cubic feet in this regard. If actual measurement was made read with notification and the minimum wages fixed in this regard, it would have been established that the payment made to the private respondents was in conformity with the requirements of law in this regard. Not only this, the petitioner was not given adequate opportunity before the designated authority who was S.D.O. Araria and ex parte order came to be passed which has caused serious prejudice to him. Petitioner further states that since work in question related to village Panchayat, a Committee of the Village did carry out spot verification and they have submitted a report which has been brought as Annexure-3 to the writ application. This material was brought in appeal before the Collector but the Collector in a mechanical way has rejected the appeal without taking into consideration the material which was available for and against the petitioner in this regard.

WEB COPY NOT OFFICIAL

5. Though a counter affidavit has been filed on behalf of the official respondents but they have not brought on record whether any kind of enquiry was held and a furnished report by the Labour Inspector. The court is not unmindful of the fact that at times there is a kind of enthusiasm inherent in such authorities created under special law to tilt in favour of the beneficiary but whether that tilt is

based on substantive evidence or material while adjudicating a matter has to be seen by the court . These are beneficial piece of legislation but before a person can be saddled with a responsibility and liability under the statute the factum of breach must be established with cogent materials and evidence on record. Fishy kind of enquiry or report may not bring home the liability or the charges upon the so-called violator of law.

6. There is categorical assertion on behalf of the petitioner that because of lack of actual physical verification at the relevant time by the Labour Inspector, looking at the dispute the local Panchayat did order for enquiry and did submit a report which was duly brought before the Collector at the time of filing of the appeal then for the reasons best known, since the same has been ignored serious prejudice has caused to the petitioner.

WEB COPY NOT OFFICIAL

7. Looking at the impugned orders passed would show that the S.D.O. has passed ex parte order against the petitioner. There is hardly any discussion or the material which has led to conclude in favour of the private respondents. Mere conjectures based on the report of the Labour Inspector is the basis for the liability fixed. The order passed in appeal is no better as there is no deliberation or reasons assigned therein.

8. In that view of the matter the Court is of the opinion that the authorities have failed to exercise authority in consonance with the requirement of not only natural justice but also the procedure laid down under section 20 of the Act.

9. The impugned orders contained in annexures 2 and 5 are hereby quashed. The writ application is allowed.

10. A sum of Rs.5, 000/- which was deposited by the petitioner on 5th of November, 1992 pursuant to the order of the High Court dated 25.9.1992 will be ordered to be refunded to the petitioner within a period of eight weeks from the date of receipt/communication of the order.

11. There will be no order, however, as to the cost.

(Ajay Kumar Tripathi, J)

Patna High Court:
The 10th November, 2008.
R K Pathak (NAFR)

WEB COPY NOT OFFICIAL